IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MARIA LOZA-FELIX, Petitioner, v. HON. JOHN S. LEONARDO, Judge of the Superior Court of the State of Arizona in and for the County of Pima, Respondent, and STATE OF ARIZONA, Real Party in Interest.	2 CA-SA 2007-0061 DEPARTMENT B DECISION ORDER

SPECIAL ACTION PROCEEDING

Pima County Cause No. CR-20071496

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¶1 Having duly considered the petition for special action, the state's response, and the oral arguments in this matter, we decline to accept jurisdiction. In view of our colleague's detailed dissent, we state the reasons for our decision. Simply put, the superior court, acting in its appellate capacity, did not abuse its discretion in finding that the city magistrate improperly imposed its own criteria not supported by law and in finding that the magistrate failed to connect arguable policy and legal principles to any specific facts to support its finding that the petitioner's health and safety was subjected to unreasonable risk. *See Cranmer v. State*, 204 Ariz. 299, ¶ 7, 63 P.3d 1036, 1038 (App. 2003) (superior court's decision in special action proceeding reviewed "on the merits to determine whether it abused its discretion in granting or denying relief"); *Bazzanella v. Tucson City Court*, 195 Ariz. 372, ¶ 3, 988 P.2d 157, 159 (App. 1999) (same); *State v. May*, 210 Ariz. 452, ¶ 9, 112 P.3d 39, 42 (App. 2005) (no basis for finding consensual and uneventful roadside blood draw from intoxicated driver conducted by sheriff's deputy/phlebotomist on trunk of car unconstitutional). We agree with the superior court that it was not the magistrate's prerogative to "set standards" for state law enforcement not required by law.

PHILIP G. ESPINOSA, Acting Presiding Judge

Judge Vásquez concurring.

E C K E R S T R O M, Judge, dissenting.

¶2 I would grant jurisdiction because, in my view, the trial court erred in reversing the magistrate's carefully reasoned finding that the blood draw violated the constitutional standards set forth in *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826 (1966). The superior court's ruling misunderstands our court's holding in *State v. May*, 210 Ariz. 452, 112 P.3d 39 (App. 2005). In *May*, this court addressed, but did not endorse, the practices the defendant complained of there: law enforcement officers with comparatively minimal medical training, and without the benefit of quality assurance monitoring, taking blood at the scene of a traffic stop, on the trunk of a car, from a standing defendant. *See id.* ¶¶ 7-8, 10. We merely held that, under the specific facts and expert testimony presented there, the trial court did not abuse its discretion when it found those factors, standing alone, failed to create a sufficient increased risk of pain or infection to render the procedure unconstitutional. *Id*. ¶ 9.

¶3 Thus, our holding in *May* did not preclude a future trial court from considering those same factors—coupled with additional substantial factors extant in the facts before it and in the context of different expert testimony—in concluding that a different search was unreasonable. The United States Supreme Court in *Schmerber* endorsed only "minor intrusions into an individual's body under stringently limited conditions," 384 U.S. at 772, 86 S. Ct. at 1836. We sail in dangerous and uncharted constitutional waters when we fault a magistrate for enforcing that standard in the context of an intrusive medical procedure, conducted on the hood of a car, performed by law enforcement officers in the competitive

pursuit of criminal evidence. Thus, to the extent *May*'s holding can be squared with *Schmerber* at all, the existence of one substantial risk factor not found in *May* could be enough to cross constitutional boundaries—boundaries we declined to articulate in *May*.

¶4 Here, the magistrate implicitly found, among other facts, that the defendant's motor control was so impaired the officers themselves feared she would be unable to keep her body steady on the bumper of the police car as an officer drew her blood. Indeed, an officer was delegated to catch her in the event she lost her balance. Notwithstanding Loza-Felix's obvious lack of motor control, the officer required her to steady her own arm on her fist to compensate for the awkward position of her body over the hood of the car. The magistrate also noted the state had presented no evidence the officer was trained to respond to any complications that might arise from such a risky blood draw in the field. In my view, the substantial possibility, recognized by the magistrate, that Loza-Felix's arm and body might be unstable at a moment when a needle was withdrawing blood from her arm created a meaningful risk of pain and injury not extant in either *Schmerber* or *May*.

¶5 I acknowledge the superior court's concern that the magistrate suggested appropriate police policy in her otherwise exhaustive and carefully reasoned order, a topic beyond her appropriate domain. But, far from making those brief suggestions a test or standard for constitutional reasonableness, the magistrate properly identified the correct legal issues and resolved them based on the totality of the facts and the expert testimony before her. *See May*, 210 Ariz. 452, ¶ 9, 112 P.3d at 41; *see also Winston v. Lee*, 470 U.S. 753, 760-61, 105 S. Ct. 1611, 1616-17 (1985) (endorsing "case-by-case approach," in conformity with

Schmerber framework, for evaluating reasonableness of medical procedures conducted to secure evidence). In short, I would hold that the magistrate did not abuse her discretion when she essentially concluded that the blood draw conducted under the circumstances set forth in the relevant record was a far cry from the "commonplace" blood draw conducted by medical personnel at a medical facility in *Schmerber*. 384 U.S. at 771, 86 S. Ct. at 1836. Indeed, the record suggests little effort, if any, by the state to comply with *Schmerber's* unequivocal holding—that the "conditions," place and manner under which a blood draw can be secured from a suspect be "stringently limited." *Id*. at 772, 86 S. Ct. at 1836.

PETER J. ECKERSTROM, Judge